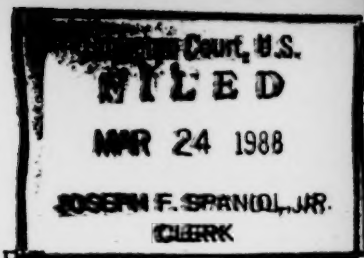


No 87-1139



IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1987

JOHN GAGLIARDI, Petitioner

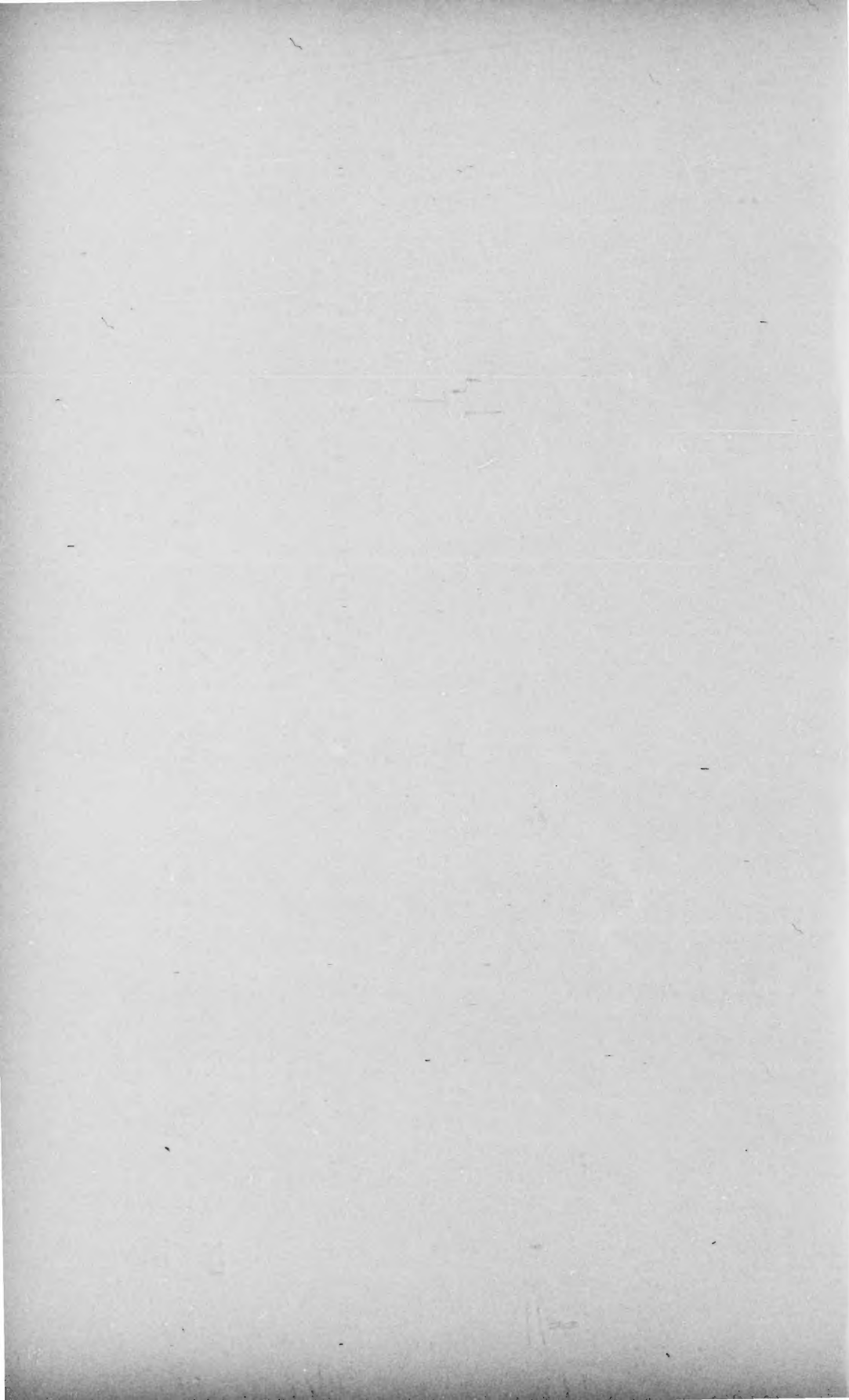
vs.

DONALD E. ZIEGLER and CATHERINE MARTRANO,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MEMORANDUM OF PETITIONER IN RESPONSE
TO THE MEMORANDUM IN OPPOSITION

JOHN GAGLIARDI
191 WALL ROAD
CLAIRTON, PA 15025
412-233-7700



This memorandum is written in response to the memorandum in opposition to the petition for writ of certiorari because of the need to correct certain glaring inaccuracies in the statements made by the solicitor general in its memorandum.

Interestingly, there is no comment regarding the United States Attorney representing defendants Ziegler and Martrano before the United States Court of Appeals for the Third Circuit. This is the first glaring omission in the memorandum of the Solicitor-General in opposition to the Petition for writ of certiorari.

It is essential to respond to the memorandum in opposition to the Petition for writ of certiorari because of the glaring inaccuracies contained in the memorandum. The Solicitor General seeks

to prejudice the court against this litigant by reciting a number of matters which were contained in the memorandum. The allegations in the memorandum seek to prejudice the Court against petitioner by making the petitioner appear to be a frivolous litigant who should be ignored, regardless of the merits of the case. This is a cynical attitude on the part of the Solicitor-General which should not be sanctioned or rewarded. The memorandum seeks to warp and distort the main issue of the case, the fact that Donald Ziegler ruled on a case in which he was the defendant, by analogising the situation to recusal issues when a judge is made a defendant for the purpose of securing his recusal from a case in which the substantive rights of others are involved. The issue is one of declaratory, and injunctive relief, as well as damages and costs for the denial of John Gagliardi's



right of access to the courts. The amount of damages may be difficult to prove but damages are very real and are not speculative. The right to Petition the Courts for redress of grievances is a fundamental right and is of inestimable value. It is important to recall that Judge Ziegler was not named as a collateral or additional party in the original civil action. He and Catherine Martrano were the only defendants. John Gagliardi was not attempting to recuse Ziegler as the Solicitor General would indicate, but was instead trying to obtain relief against him. Judge Ziegler took the unbelievable step of taking the case from the Clerk and dismissing it before Gagliardi even knew that Ziegler was assigned to it and certainly before Gagliardi had a chance to call for the recusal of the Judge. In fact, it was inconceivable that Judge Ziegler would arrogate to himself a case in which



he was the primary defendant.

The case In re Murchison, 349 US 133, 136, 75 S Ct 623, 99 L.Ed 942, 946 clearly sets the standard to be followed:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered.(emphasis added).

Nothing could be clearer! We can think of no other maxim of law on which there should be so little dispute!

"Ordinarily, a judge cannot be a judge of his own cause, - and such principal has long and well recognized that it is

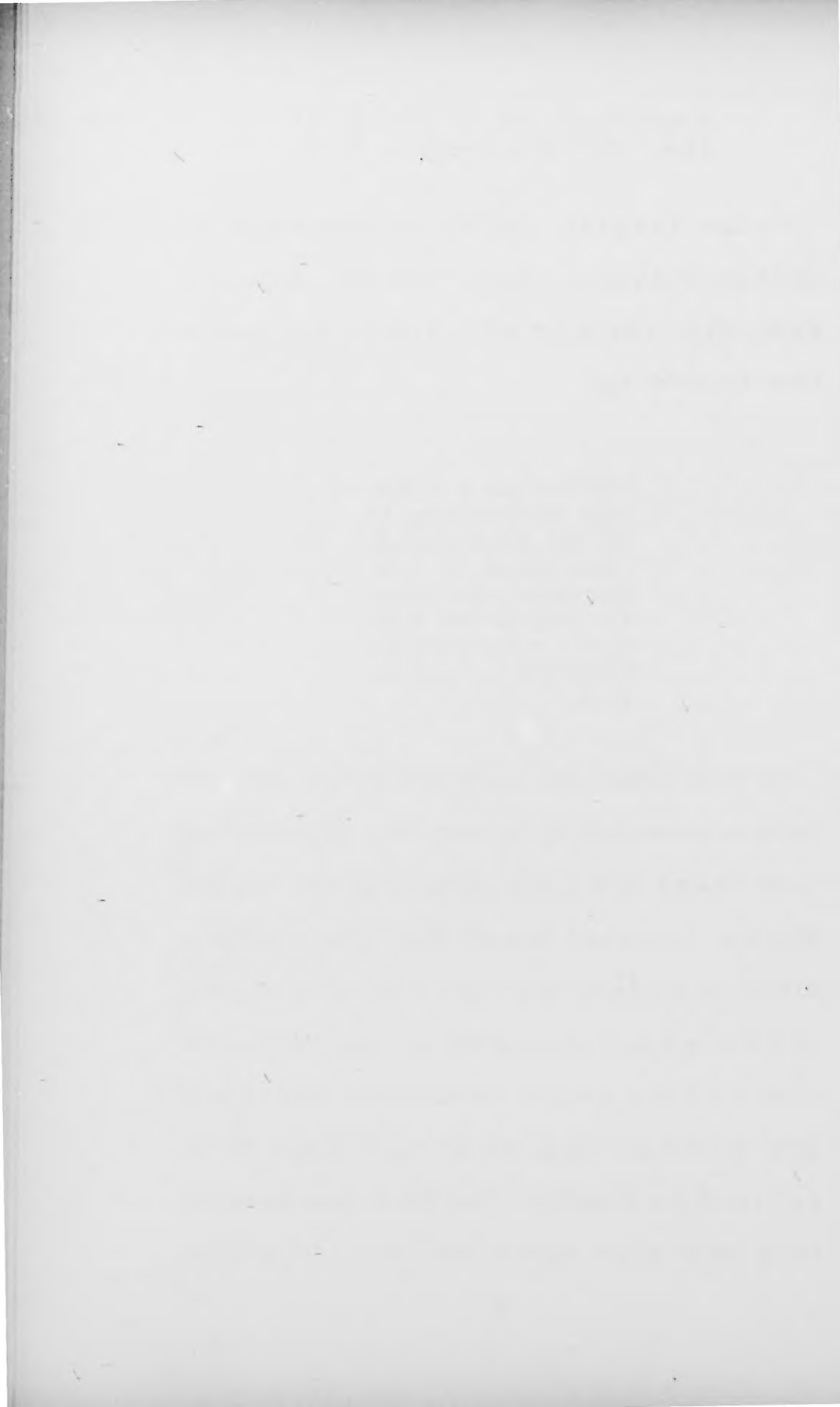


regarded as a maxim of law." CJS 48A, Judges, §119.

Judge Ziegler refers to the case of United States v Will, 449 US 200, 6 L Ed2d 392, 101 S Ct 471 (1980), but omits the following:

"Although a Judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest...", id at 213.

In this case, not only did Judge Ziegler have a personal interest, but considering that there are nine judges of the United States District Court for the Western District of Pennsylvania, the case should not have been assigned to Ziegler by the Clerk of the Court, Catherine Martrano, and after it was, it should have been refused by Ziegler. The fact that Ziegler took the case and dismissed it before



Plaintiff even knew that he was assigned to the case indicates clearly that Ziegler acted as a party and not as a judge in the case.

Ziegler and Martrano claim immunity. The question of immunity was waived by Ziegler because he did not raise it in the trial court. Ziegler wrote the memorandum dismissing the case, and he based the entire matter on alleged frivolity, rather than the substantive issue of immunity. Ziegler's attorney raised immunity for the first time on appeal and the question of immunity is not properly before the court. In any event, the concept of total judicial immunity is coming into disfavor, probably because of cases such as this.

Absolute immunity however is strong medicine, justified only when the danger of officials being deflected from the effective performance of their duties is very great,

Forrester v White, 484 US ____, 88 LEd 2d 555, 108 S Ct 538(1988).

Ziegler impaired the effective performance of his duties when he took this case on himself. He now seeks to take advantage of his own wrongdoing. The case is similar to a child who commits patricide and then asks for clemency because of the fact that he is orphaned. Having the case assigned to another Judge would have in no way harmed Ziegler, particularly if the claim asserted was as frivolous as he claimed. His arrogating the case to himself makes one question his motives, including whether he felt that he would minimize his exposure by handling the case himself. Questions such as these are exactly the reason Congress decided in drafting 28 USC §455 that a judge could not act on a case in which he was a

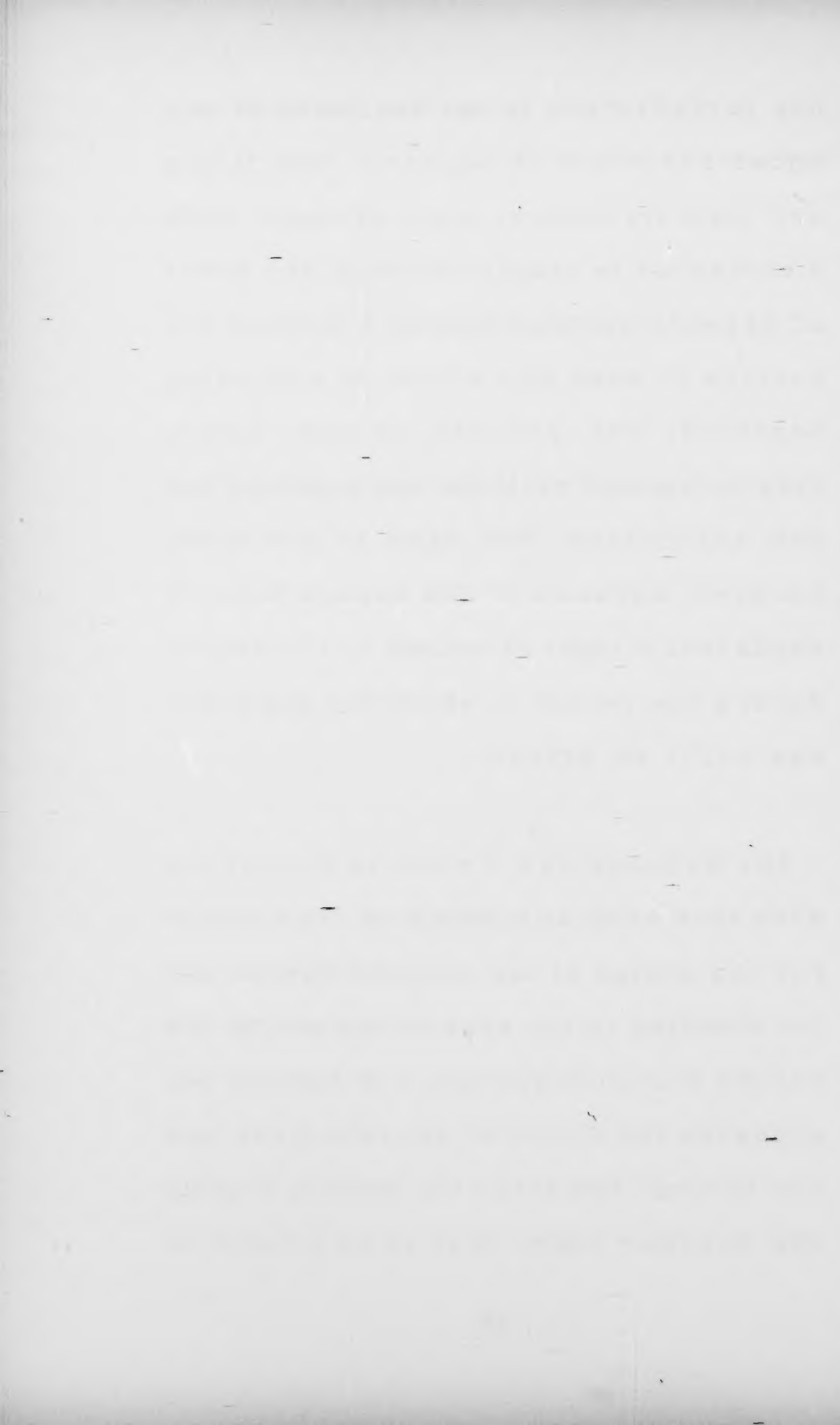
party. It is a per se rule, and so it should be because there will be ALWAYS a question in cases such as this concerning the motives of the judge who acted as a judge in his own case.

The Solicitor General's memorandum contained several factual misstatements. The Solicitor-General claims that, in a totally unrelated case, Judge Ziegler determined that Gagliardi acted for a woman named Janice Bochter without any authority. Judge Ziegler and the Solicitor-General consider this evidence that Gagliardi is a frivolous litigator. The question is irrelevant to this case, but the Court should be aware that the allegation of the Solicitor is a lie. Attached hereto is a copy of an affidavit from Janice Bochter relative to the allegation of the Solicitor General. Finally, the Solicitor General stated that Judge Ziegler was well within



his jurisdiction to bar Gagliardi or any known associate of Gagliardi from filing any lawsuits without leave of court. Such a statement is simply not true. The Court of Appeals vacated Ziegler's actions for failure to make any effort at affording Gagliardi due process of Law. Later, Ziegler himself relented and dismissed his own injunction. The case is not moot, however, because of the damage done to Gagliardi's right of access to the courts during the period in which the gag order was still in effect.

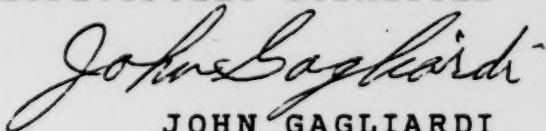
The Supreme Court must be concerned with this case as a result of its concern for the status of the Judicial System and its standing in the eyes of the public. The United States Department of Justice has signaled the Court of Appeals first, and now through the Solicitor-General signals the Supreme Court that it is proper to



ignore the rights of litigants like Gagliardi because such people are engaged in frivolous litigation. John Gagliardi is not going to permit the matter to be swept under the rug. The judicial System is supposed to provide a fair and impartial tribunal for all Americans, and not for just those Americans who have the approval of the Department of Justice. The Court should issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Dated March 21, 1988

RESPECTFULLY SUBMITTED

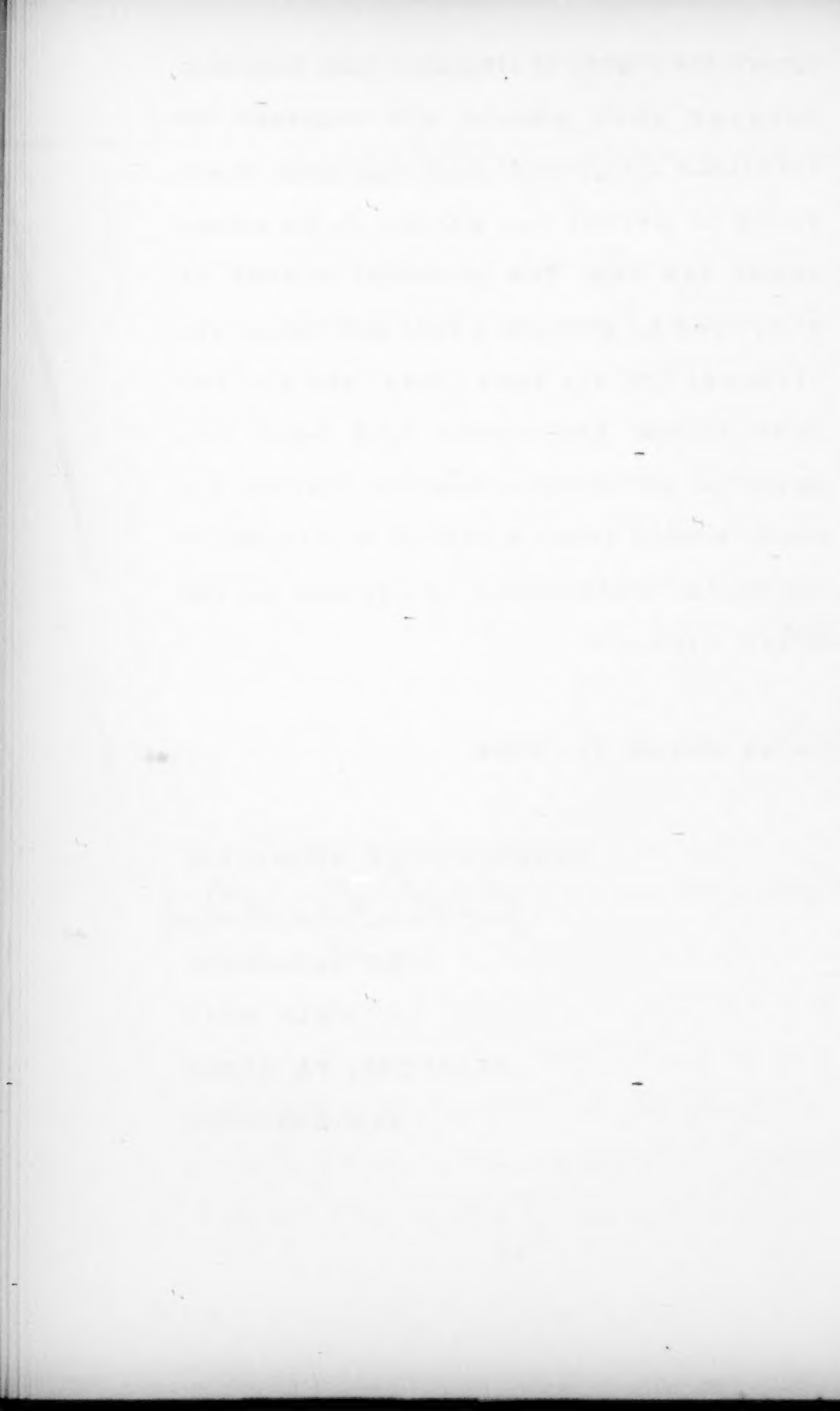
A handwritten signature in cursive script, reading "John Gagliardi".

JOHN GAGLIARDI

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CERTIFICATE OF SERVICE

I certify that I have this day served the proper number of copies of the foregoing memorandum on the persons at the addresses set forth below, by first class mail, prepaid:

Solicitor General
Washington, DC 20530

US Attorney
633 US PO & Court House
Pittsburgh, PA 15219

Donald Ziegler
US PO & Courthouse
Pittsburgh, PA 15219

Dated Mar 22/88

John Baghaidi